

**UNITED STATES OF AMERICA**  
**BEFORE THE NATIONAL LABOR RELATIONS BOARD**  
**REGION 29**

**NEW YORK PAVING, INC.,**  
**Respondent**

**And**

**Case Nos: 29 CA 197798**  
**29 CA 209803**  
**29 CA 213828**  
**29 CA 213847**

**CONSTRUCTION COUNCIL**  
**LOCAL 175, UTILITY WORKERS**  
**UNION OF AMERICA, AFL-CIO,**  
**Charging Party**

**And**

**HIGHWAY, ROAD AND STREET**  
**CONSTRUCTION LABORERS LOCAL UNION**  
**1010 OF THE DISTRICT COUNCIL OF PAVERS**  
**AND ROAD BUILDERS, LABORERS**  
**INTERNATIONAL UNION OF NORTH**  
**AMERICA, AFL-CIO,**  
**Party of Interest.**

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**CONSTRUCTION COUNCIL LOCAL 175, UWUA, AFL-CIO**  
**SUBMISSION TO ADMINISTRATIVE LAW JUDGE**  
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## **Table of Contents**

<b>Introduction</b>	<b>p.2</b>
<b>Review of Testimony of Peter Miceli</b>	<b>p. 3</b>
<b>Review of Testimony of Robert Coletti, Esq.</b>	<b>p. 18</b>
<b>Review of Testimony of Joseph Bartone, Jr.</b>	<b>p. 27</b>
<b>Review of Testimony of Louis Dadabo</b>	<b>p. 33</b>
<b>Review of Testimony of Robert Zaremski</b>	<b>p. 38</b>
<b>Review of Testimony of Pasquale Labate.</b>	<b>P. 46</b>

### **INTRODUCTION:**

**Charging Party, Construction Council Local 175, UWUA, AFL-CIO, (herein referred to as “175” or Local 175), provides this Submission to supplement the Post-Hearing Brief of the Counsel for the General Counsel in further support of establishing the National Labor Relations Act violations alleged in the Complaint against New York Paving, Inc., (herein referred to as “NYP” or New York Paving). Local 175 hereby adopts and incorporates by specific reference the Post-Hearing Brief submitted to Administrative Law Judge, Andrew Gollin, Esq., by Counsel for the General Counsel of the National Labor Relations Board. Therefore,**

**175 will not repeat here the Statement of the Case, the Procedural History or the Facts as set forth in that Post Hearing Brief filed by the Counsel for the General Counsel, Noor Alam, Esq.**

**Instead, 175 will review with the Administrative Law Judge the testimony of New York Paving, Inc.'s witnesses with an eye to pointing out their exaggerations, misstatements, improbabilities, errors, obvious evasions and equivocations in their trial testimony. These observations serve to undermine the credibility of New York Paving, Inc.'s witnesses.**

**PETER MICELLI—REVIEW OF TESTIMONY:**

**Mr. Micelli was prone to exaggeration and misstatements of fact throughout his trial testimony. The following are examples.**

**When called to testify by the General Counsel Micelli described himself as being the Operations Manager/Director of Operations; that he was the number two person in the Corporate hierarchy under the President and Principal owner, Anthony Bartone. [Tr. 52]. On cross examination, in response to a question as to whether there was anybody on an equal corporate level with him in terms of decision making Mr. Miceli responded differently, noting that he was not the number two person and that obviously**

**Bob Coletti, Esq., NYP's General Counsel, was "higher than me." [Tr. 125].**

**When asked by General Counsel if he had been to a Con Edison pre-bid meeting in October 2016 Mr. Miceli responded, "Could be. I've attended a lot of pre-bids." Tr. 73. When asked on cross if he had attended pre-bid meetings at Con Ed after January 1, 2016 he was adamant that he had not; which immediately changed to "I don't recall a meeting in 2016" to "I could have, you know." [Tr. 130]. Later on in testimony Miceli indicated all contractors who wanted to remain eligible to bid had to attend Con Edison pre-bid meetings or risk being taken off the bidder's list. [Tr. 172]. Miceli knew he was at the meeting but for some unknown reason did not want to admit it. He knew if he did not attend, NYP would be taken off the bidder's list for both asphalt and concrete; and NYP wouldn't be able to bid any of the work. [Tr. 172].**

**Miceli, when asked whether NYP ever had a labor dispute on a Con Ed location with any labor union, he responded not that he knew of. [Tr. 132]. Later, in testimony, Miceli complained of fighting/sabotage over performance of the Con Ed work he believed was committed by Local 175 agents. [Tr. 138-139].**

**Miceli testified that he was the only one who could fire or ban any employee from New York Paving. [Tr. 189] Then when listing various workers who were previously let go he stated several times that others at NYP did the firing, not him. [See Tr. 270]**

**Miceli testified that 175 did the asphalt paving work between 2010 and 2015, or 2016, or maybe into 2017; that had been work subcontracted to NYP from Hallen Construction related to Con Edison street cuts. [Tr. 136]. NYP stopped using 175 members to do that work when “New rule changes” came into effect. [Tr. 137, 140-141]. Miceli then directly contradicted himself on cross by his own attorney when he stated that NYP had not had a contract calling for asphalt work for Con Ed, *either directly or indirectly* for at least ten years. [Tr. 166]. Then what was Miceli speaking about when he said 175 did the asphalt work between 2010 through maybe 2017; even up to March 2018? [Tr. 136]. And he confirmed at least that NYP performed asphalt work subcontracted from Hallen related to Con Ed work that was primarily emergency keyhole work at least three days a month. [Tr. 166].**

**Next, Miceli testified he had about between 75 and 80 Local 175 men going out of the yard every day. [Tr. 166]. Later he refers**

to 150 guys from 175 going out to work. [Tr. 100]. Claimed later that monthly 125 Local 175 guys were working. [Tr. 1457]. His testimony often was filled with such extreme exaggeration. No monthly payroll record for any period was submitted showing those kinds of numbers of 175 men being employed in a month-ever. Notably, the payroll records submitted at Bates Stamp #0806 showed only a total of 84 different Local 175 members worked variously the entire fourth quarter of 2016; (and that number is probably for the entire year). Further, Bates Stamp payroll records #0808 to #0863 for the year 2017, when the number of men reflected on that year's payroll are added up, show a total of only 87 different Local 175 men were actually employed for the entire year (including all the workers being allegedly filtered in by 175 Manager, Roland Bedwell). NYP was not sending out 75-80 Local 175 members each day; and a review of the weekly payrolls would confirm that fact. Clearly, when they only have badged maybe 55 workers; how can he say truthfully that he is sending out 75-80 Local 175 members each and every day?

Miceli, the Director of Operations, the number two or three person in corporate hierarchy for NYP, asserts NYP is not "really"

that interested in Con Edison asphalt. [Tr. 86]. “[Y]ou know, going after –going to get the Con Edison asphalt work really hasn’t been on the front burner at New York Paving for at least a decade, if not longer.” [Tr. 87]. When asked if it were true that NYP was interested in obtaining asphalt work from Con Ed he baldly said: “No, I don’t even know who said we were going ... .” [Tr. 87]. When confronted with General Counsel’s Exhibit 9, a Federal Court Complaint brought by NYP against 175 and its benefit trust funds; where NYP asserted it not only had Con Edison work for asphalt but was seeking more such work, where the Complaint was brought to avoid double payment of benefit fund contributions by having the Court strike down the 175 contract; or vitiate the requirement to pay the funds; he stated as the person in direct control of NYP Operations that he was not familiar with the Complaint. [Tr. 89; 240;; General Counsel Exhibit 9]. Miceli simply either was not believable; or he is totally out of the loop at NYP.

Miceli was asked questions during the hearing regarding a company known as Di-Jo Construction. [Tr. 120]. He was asked whether Eric Perez was the only person in charge of day-to-day operations at Di-Jo. Miceli answered *Yes* to the question; affirming

as correct that there was nobody else at Di-Jo that oversees people's work. [Tr. 121]. Later in the trial, when called to testify in Respondent's Direct Case, Miceli advised that NYP used Di-Jo as a training ground for workers for many years. [Tr. 1407]. He claimed Di-Jo workers did not do asphalt. [Tr. 1412]. Miceli went on to admit that he is employed by Di-Jo; and that he controls the Di-Jo workers who are trained on NYP work; and controlled which Di-Jo worker thereafter was hired full time by NYP and placed into a union. Miceli also revealed that NYP handles the payroll, time sheets and makes out the payroll for Di-Jo workers. [Tr. 1421, 1422, 1423, 1424].

Turns out, Miceli is also the Director of Operations for Di-Jo; which is in direct contradiction to his testimony that Eric Perez was the only person in charge of day-to-day operations of Di-Jo. Appears that Eric Perez must report to Miceli. So Miceli was not totally open about his status with Di-Jo or Di-Jo's with NYP.

Miceli stated that he saw documents, time sheets or payrolls; or whatever; that made him believe Glen Patrick and Gus Seminatore were being paid for time they spent being present at Region 29 in a 10K hearing. He knew they had received pay



checks, and he waited to see if they came to him to report an overpayment. When they did not report it to him; he decided to fire them; and the timekeeper, Greg Schmaltz, as well for having allegedly reported their hours erroneously. But the real reason why Miceli fired them came out in his testimony when pressed with the following question: “In the normal course, if a person thought they were properly paid would there be an expectation for them to come to [Miceli]?” [Tr. 146]. Miceli agreed that obviously if the guys thought they had been properly paid they wouldn’t come to him and say that. [Tr. 147]. Miceli spoke further in response.

“So you’re saying both of them understood that we were just going to pay them to come here [referencing Region 29]. Is that what you’re trying to tell me? And they both made the mistake and thought that, okay, yea, no problem. I’ll pay you. I had Glen come up here and lie and Gus lie. Cone on, now. What are you talking about.” Tr. 147.

Miceli was furious that the men had gone to the labor board. He was so upset that he even believed Gus had testified; and lied; when he was simply the Union’s designated representative and had not testified—but Miceli said Gus lied at the board and also was getting paid for going to the Region. It did not matter to Miceli that Gus never testified; it didn’t matter that Gus was not reported to be

**paid anything for October 2, 2017; he was so angry he simply wanted to fire him. As he said, you are only a dime away from being terminated. [Tr. 259-260].**

**Miceli testified that 175 Business Manager, Roland Bedwell, was filtering workers in through NYP constantly. He claimed 20-25 new different guys each week in 2016 and 2017 were working on NYP crews. He said Roland was cycling in 200 people. [Tr. 1452.] To the contrary, a review of the payroll records, Bates Stamp #0779 to #0807 show only that a total of 84 different names of 175 members worked in the last quarter of 2016 [probably the number for the entire year.] Of those 84 different workers, 31 of them worked less than 4 weeks in the quarter and the rest worked regularly. In the year 2017 the total number of 175 members who worked for the entire year at NYP was 87 different guys of which only 26 of them worked less than 4 weeks in the year. See Bates Stamp #0808 to #0863. Once again Miceli played fast and loose with facts. The number of workers who were not regularly employed was consistent with the ebb and flow of work during the year; as some weeks fewer or more workers were needed to complete the jobs. But Miceli seemed genuinely angry at what he**

**perceived as sending unknown workers to NYP when they called for extra laborers in 2016 and 2017.**

**Miceli claims a worker named Klaus Wolfgen had been working 52 weeks a year but left NYP because in late 2016 and early 2017 he missed one or two weeks a month. Fact is, based on actual payrolls, Mr. Wolfgen worked virtually every week, at least 3-5 days. [See Bates Stamp #0806, 0863]**

**Miceli was emphatic when he testified that he had created a list of 175 members who had been “Badged” consisting of 75-80 men. These were the workers he decided were the ones he wanted to be eligible to work at NYP. [Tr. 228-230; 252-253]. When challenged about his claim of 75-80 men on a list of Badged 175 members he adamantly responded: “I’d say you don’t have the updated list, I would think.” [Tr. 253] Ten days later, when back on the witness stand in NYP’s direct case; Miceli had to eat his words admitting that only 55 names appeared on his coveted “Badged” 175 list. [Tr. 1361] Miceli’s problem appears to be that when he gets a thought or wrong fact in his head he goes with it without thoroughly checking it out.**

**Miceli did not recall if Joseph Bartone, Jr. was in an automobile accident on November 1, 2017. He did state that he may have been involved in one. I don't know. [Tr. 265]. When asked if he was aware that in the week of November 1, 2017 that Joseph Bartone, Jr. did not work on that day but got paid for it; he responded: "So." When asked again if he knew, he said: "I don't know it to be true... ." [Tr. 265]. Miceli asserted that Bartone Jr. did not receive any special treatment at NYP. Tr. 1417. I guess he did not think that paying Bartone Jr. for days not worked did not rise to the level of special treatment. [Tr. 1417-1418]. [See also Bates Stamp 1302 where the time sheet for November 9 & 10 reflects he was paid for those days per A. Bartone ; but had not worked them; See Bates Stamp #1325 & 1329 which appear to show Bartone Jr. was paid twice for the same day, November 22, 2017]**

**Notably, when Bartone Jr. was paid the unworked days he did not come to Mr. Miceli and report a mistake; nor was he disciplined in any respect. Yet, according to Miceli, Bartone Jr. did not know about the deal his Grandmother, Martha Bartone, had made with Miceli and Maura Hernandez, the payroll manager that Joey gets**

paid every day, working or not. [Tr. 1418]. Miceli claims neither Robert Coletti, Esq., NYP General Counsel, nor Rob Zaremski, Operations Manager, knew about the deal Martha Bartone insisted Bartone Jr. have from the company. No other person on the planet knew said Miceli. [Tr. 1418]. So why didn't Miceli expect Bartone Jr. to report the overpayment?

Miceli claims that Bartone Jr., at some unstated time in passing, [he did not remember the date Bartone Jr. told him; testifying "I don't know if it was the 16<sup>th</sup> or the 17<sup>th</sup> or the 18<sup>th</sup> [Tr. 1487], mentioned to him that Gus Seminatore had gotten to work late on October 16, 2017 about 11:00 A.M., [saying "it was crazy; Gus showed up—we've got to go back and get Gus at 11:00; that was it"] [Tr. 1487]. Armed with that seemingly innocuous comment from Bartone Jr., Miceli allegedly set in motion an investigation of Seminatore and noticed that Seminatore was on the Time Sheet for October 16 as having worked all day. Miceli also claimed to have checked NYP's "silent passenger" tracking system and speculated that the crew Seminatore was working on had "gone back to a particular location to go pick up Gus. It went to –did the rest of the work throughout the day, double-backed to drop off Gus at the

location where he left his car.” [Tr. 1384]. Miceli gave no date for which he allegedly checked the GPS record; gave no specific location or locations which showed up on the GPS; and made the further assumption that the movement of the truck being tracked was for the purpose of picking up Gus; who had testified that he drove his car and met the crew at their second stop of the day at or about 8:30 A.M. after oversleeping. Consistent with Gus’ testimony the crew’s vehicle at the end of the day would have had to go back to where Gus had left his vehicle. But Miceli’s testimony that the GPS showed they had to go back to a particular location (unknown) to get Gus makes no sense since Gus had his own car and could have met the crew, (and did meet them), anywhere the crew was working. Once again Miceli is playing fast and loose with information. And notably, none of the silent passenger information had been provided previously to Region 29 in the investigation, in Miceli’s affidavit supplied to the Region, to 175 or anyone until he just happened to mention it in testimony at trial.

What is important here is that Miceli’s belief that Gus got to work with the crew at 11:A.M. solely comes from Bartone Jr. [Tr. 1383.] Bartone Jr., when specifically asked about this situation by

NYP attorney, Jon Farrell, stated *he was not familiar of the exact date or a general date; did not actually know the date;* and that when asked if he had any recollection of how late Mr. Seminatore was to come to work that day; Bartone Jr. responded: “Not exactly hours.” [Tr. 1221]. Pursued by Mr. Farrell for a better response Bartone Jr. advised “Midday. 11 maybe.” Trying to think, Bartone Jr. came up with around lunchtime, noon. But then stated: “*It could have been – I’m not – yeah, I’m—I’m not positive what time. I don’t want to – I don’t want to give the wrong –*” [Tr. 1222]. And Miceli’s testimony related to the “silent passenger” related no facts as to time of day whatsoever; nor the day he checked about it. For all we know he could have been looking at some other day on their tracking system. It is submitted that Miceli has tailored his claim that Gus arrived at the crew’s location around 11 A.M.-Noon to justify his new claim that he fired Gus for being paid for that day; October 16.

Even Miceli admitted that when guys come in late, they’re – normally, they’ve missed the guys in the yard and they’re going to the first location. *That’s no problem. [Emphasis supplied.]* [Tr. 1488] Gus testified creditably that he called Greg Schmaltz, told

him he woke up late; and he would meet the crew at their second stop. Greg Schmaltz took the crew out short, and did not look for a replacement, knowing Gus was going to meet up with them early on. That is what happened here; but Miceli wanted to rid himself of Gus for having acted as the Union's designated representative at the 10K hearing; so he enhanced the lateness, pointing to Bartone Jr.'s equivocal testimony, to claim Gus came to work at 11:00 A.M. or Noon and got paid for a whole day when in fact he arrived around 8:30 A.M. on October 16. Notably, Miceli admitted no one ever was fired for coming in late. [Tr. 1502-1503].

Miceli asserted that as Roland Bedwell filtered 20-25 different guys a week thru NYP that they did not know if the cycled guys had OSHA cards. His attorney asked him: "The workers that New York—Roland cycled through, and I'm using that in the vernacular, did New York Paving know if they had OSHA timecards?" Miceli responded: "NO." [Tr. 1357]. Fast forward to Tr. 1462 where he was asked: "Well, my question was what is it that made you believe that they [the filtered guys] didn't have an OSHA card? Response from Miceli: "I never said that." Initially he



said they did not know if they had OSHA cards; and then denies he ever said he did not know if they had OSHA cards.

When asked by Judge Gollin if he was open for badging and needed people what would the process be for the person to go through in order to receive a badge [Tr. 1467]; Miceli ducked the question by saying he was not at that point yet and didn't know what that process is at the moment. "Maybe at the next ULP I'll have an answer for you." [Tr. 1467].

Miceli claimed that Mr. Seminatore missed a day every week for one and a half years that he worked for NYP. [Tr. 1475]. A review of Bates Stamp #0802 related to the last quarter of 2016 shows he worked 10 full weeks and 4 partial weeks for a total of 528 straight time hours and 89.5 overtime hours for a total of 610.5 hours (or 43.6 hours a week); and Bates Stamp 0854 shows he worked 18 full weeks and 26 partial weeks in 2017 compiling 1,448 regular hours and 417.5 overtime hours for a total of 1,865.5 hours in approximately 10 months; or on average 186.55 hours a month or 42.397 hours a week for the 44 weeks he worked in 2017. Some guys want to have a home life; but Miceli apparently

did not like that Gus maintained a balance in his life between family and work.

When testifying about Glen Patrick leaving the 10k hearing on October 2, 2017 and switching places with Gus Seminatore on Greg Schmaltz's crew, Miceli claimed he did not hear 175 Counsel direct Glen Patrick to go back to work. He stated "absolutely not. Why would I think he'd go to work? [Tr. 1475] Miceli admitted he knew 175 was calling for Gus Seminatore to come to the 10k hearing to replace Glen Patrick. [Tr. 1475] When asked if Gus came to the hearing, whether the crew Gus was working on would be working short; Miceli stated: "I didn't even know Gus was working that day." [Tr. 1476] Notably, the Transcript of October 2, 2017, Exhibit GC-6, where parties discussed Mr. Patrick leaving and Mr. Seminatore coming to the 10k hearing, specifically recites that Counsel for 175 advised all who were present that: "*Mr. Seminatore is working today.*" Exhibit GC-6, p. 3 (Transcript page number 464 in the Exhibit) So Miceli now claims he did not know Gus was working that day; but the transcript of that day demonstrates that he was told that Gus was working. His memory on this point, like so many others, was obviously convenient.

**Miceli was asked by his counsel: “Who is Donald Mascetti.” [Tr. 1403]. Miceli answered: “he’s a laborer.” His counsel asked: “And do you know he was issued a badge?” [Tr. 1403]. Miceli responded: “*He had a badge.*” Moments later Miceli testified that he told Robert Zaremski that Mascetti was no longer welcome at NYP because: “ I said he doesn’t have the badge.” In order to cover up the obvious inconsistency of his testimony his Counsel asked him why he fired Mascetti saying: “Okay, why did you make that decision?” [Tr. 1404]. Miceli responds by going into a story that Mascetti was getting laid off when the milling crews were down; that they were moving him around; there were obviously people much better than him.” [Tr. 1404]. But a check of Bates Stamp #0836-0837 evidences that Mascetti worked pretty consistently from week ending August 13, 2017 to when he was fired in October 2017.**

**The above recitation of Miceli’s inconsistent testimony demonstrates that he often exaggerates; obfuscates, and even just makes things up to such an extent that his testimony is unreliable and not credible when it is evaluated.**

**ROBERT COLETTI, JR., ESQ.: REVIEW OF TESTIMONY:**

**Mr. Coletti has for 33 years been the General Counsel of NYP. Coletti confirmed that he had a conversation with Billy Smith, shop steward for NYP at the time, about there being un-badged individuals in the yard he did not recognize. [Tr. 1254.] Coletti testified that he pleasantly asked Mr. Smith to try to ensure that it didn't happen again; indicating he knew it was not Billy Smith's fault. [Tr. 1255.]**

**Smith's recollection of the incident was seriously different. Smith remembered that Coletti approached him in anger yelling at Smith that it was the second time he pulled this crap. Coletti admitted his voice "might've been elevated" due to yard noise, [Tr. 1256], but denied he was angry. [But see Tr. 501] He admitted he probably told him don't do it again. [Tr. 1306]. However, because of that incident; and because Smith did not want to fight with the company over the issue of men working without badges, he stopped being the shop steward. [Tr. 408]. Is it believable Smith quit being shop steward because Coletti talked nice to him?**

**Coletti denied ever instructing Patty Labate or Joseph Bartone Jr. to pass out or obtain signed union authorization cards**

for Local 1010. [Tr. 1262]. He was asked whether he had advised Labate or Bartone Jr. to get cards signed prior to a *May 31, 2017* deadline. [Tr. 1262]. He denied it; however the date was wrong—the question should have been did he tell Labate or Bartone Jr. to get the cards signed by May 1; [Tr. 418], the last day of the “open period” for filing a Petition for Representation; and not May 31. Thus, his denial that he did not direct them to get the cards by May 31 is truly valueless. [Tr. 855-856].

When asked if there had been any designation, public or otherwise, authorizing the Local 1010 or 175 shop stewards to bind NYP, Coletti responded “No sir.” [Tr. 1269]. However, on cross, when asked if he remembered saying that certain people had no public authority Coletti stated: “I don’t recall saying that either.” [Tr. 1307]. Coletti had been asked if shop stewards ever signed contracts for the purchase of real or personal property on NYP’s behalf. He stated “no.” [Tr. 1269-1270]. When asked on cross whether he recalled saying people couldn’t purchase equipment or real estate Coletti claimed he didn’t say that either. [Tr. 1307]. In a short period of time Mr. Coletti could not remember what he had testified to minutes earlier.

**In regard to when the Badging originated Coletti recalled it started with the announcement at a meeting that Local 175 Counsel attended in April of 2016. [Tr. 1311]. Coletti stated it was introduced in 2016. When asked if the policy was started, not in 2016 but in 2017 he stated: “I don’t believe so, no.” [Tr. 1312]. “I think I have my years correct.” The fact is the policy was placed into effect in July 2017; and Coletti couldn’t even remember the date when the policy he drafted went into effect. Exhibit E-12 p. 3 states it was effective July 17, 2017; and Miceli testified that Bob Coletti had drafted the document. [Tr. 1362-1363]. This example alone should demonstrate how unreliable Mr. Coletti’s memory is regarding the facts and events to which he testified.**

**Mr. Coletti acknowledged that, in the interest of speed, he gave Michael Bedwell a list of 175 workers who were eligible to work. [Tr. 1308]. Mr. Coletti remembered speaking with Bedwell, [in a first meeting in August, 2017], where they spoke about workers whom the company had refused to pay because they were not “authorized” to work at NYP; as they did not have Badges. When asked if that was the meeting in which he provided Bedwell with the “list of 175 workers who were eligible to work” Coletti**

**stated that he did not recall. [Tr. 1309]. When asked to look at Exhibit GC-12 to see if its very last page referred to a Union report for Local 175 employees who worked in the month of August [2017] Mr. Coletti said “no;” that it looks like its for a day. [Exhibit GC-12. P. 10]**

**The Exhibit is titled “New York Paving/Utility Division Union Report: Uo2 175 United PLT & Prod 5221 Week-Ending From: 8/06/17 to 08/06/17. The document states that it was for the W/E [Week Ending] 08/06/17 and reflected hours worked that look like a week’s worth of hours; not a days worth. Looking at Exhibit GC-12, p. 10 one sees as an example, that Michael Coletti, Mr. Robert Coletti’s son, was listed as having worked during the w/e August 6, 2017 for 40 regular hours and 13.5 overtime hours. Comparing that record to Michael Coletti’s payroll record found at Bates Stamp #0814 under the date w/e August 6, 2017 one finds the identical hours worked. Essentially, this establishes that GC-12, p 10 was a list of eligible workers who had worked the week ending 08/06/2017; and not for the day of August 6, 2017 as Mr. Coletti stated. It is submitted that if he were to be so evasive regarding a minor point such as whether the document reflected a week’s**

**payroll versus a day's payroll; what other facts was he being evasive about?**

**Notably, Coletti denied that he gave Bedwell General Counsel's Exhibit 12, claiming it was not the form that the list would have been in at the time. [Tr. 1311]. However, Bedwell testified that the Badging Policy had just been implemented several weeks earlier. Bedwell asserted that Coletti had explained that the concept of a list of eligible workers was people who regularly worked for NYP, as reflected by the January 2017 Union Report for 175 [GC-12, pp. 1-9] and the first week's payroll in August, 2017 [GC-12, p. 10]. Bedwell had testified that Coletti gave him GC-12 advising it was a list of men that he will accept that either had badges or were in the system that *he would accept* to work there. [Tr. 487, 492, 534, 536, 538, 540].<sup>1</sup>**

**Coletti asserted that he recalled giving Bedwell a list in December, 2017. [Tr. 1289, 1313]. But Bedwell was no longer a representative of Local 175 in December 2017. Charles Priola had**

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<sup>1</sup> Coletti made an issue over the black outs of social security numbers on GC 12, claiming his staff was not capable of performing the computer strike outs on the document; asserting they used good old markers. Tr. 1275-1276. However, looking at GC 12, page 9 one sees that good old black magic marker was used to black out the socials; a page apparently missed when the NLRB representative made sure the numbers were fully blacked out. Tr. 1291. It is submitted that when GC 12 was



taken over that position earlier in mid-November. [Tr. 480, 554-555].

Coletti claimed he did not discuss Union business with Shop Stewards. Yet when he saw an un-badged 175 member in the yard he immediately accosted Billy Smith, then 175's shop steward. [Tr. 1314]. Coletti remembered that he provided the list; but did not remember from where he got the list. [Tr. 1290, 1291, 1294-1295]

Coletti claimed that he was not involved at all in who is hired by NYP. [ Tr. 1263, 1277, 1284-1285, 1305]. But Bedwell believed he was the person who pretty much put people to work or who allowed people to work or not work. [Tr. 496]. Coletti thought Bedwell was still the Business Manager of 175 in December, 2017 when he rejected Bedwell's inquiry about working once again at NYP. He thought Bedwel had a full time job. [Tr. 1279]. He didn't know that Bedwell had already filled in working for NYP in early November, 2017. [Tr. 1316; Bates Stamp #0812]. He didn't ask if he was available because he didn't care; he was union hierarchy and he wasn't going to let him come back to work at NYP.

Coletti remembered meeting 175 Counsel at the NYP yard. [Tr. 1316]. There was a safety meeting that day. [Tr. 1316]. When

asked if he remembered having a conversation with 175 Counsel he stated “No.” [Tr. 1317]. When asked if he remembered talking to 175 Counsel about the Unfair Labor Practice Charge against NYP that 175 Counsel had filed in this case he stated “No.” [Tr. 1317]. Mr. Coletti’s memory once again failed him miserably.

Thus, when Coletti denies knowing what happens regarding purchases of gas if a Foreman is in Staten Island, [Tr. 1308]; or does not recall giving Bedwell a list of eligible workers in August 2017; or claims he did not give General Counsel Exhibit 12 to Bedwell; or claims the Badging Policy was first implemented in 2016; not 2017; [Tr. 1311]; or testified that he did not know if I-9 packages were made up in advance or where they could be obtained [Tr. 1312-1313]; or testified he did not remember where he got or could get a list of people who were badged [Tr. 1294-1295]; or testified that he did not ever have a conversation with Don Mascetti about an unfair labor practice; [Tr. 1263]; one needs to take his entire testimony with a grain of salt. His memory is simply unreliable.

And that includes his denials of having told Bedwell he would not hire him; or allow him to work at NYP because he was Union

Heirarchy. [Tr. 1279]. It is noted here that when NYP Counsel asked Mr. Coletti whether Coletti ever told Mr. Bedwell, during the December meeting that Coletti could not hire him because of his role in the Union-because of Union hierarchy; Coletti responded with his own question stating: "Because he's in the Union Hierarchy?" Tr. 1279. Coletti *never answered that question directly*; instead misdirecting attention to the fact that other members of Local 175's Executive Board also worked at NYP. [Tr. 1279].

**JOSEPH BARTONE, JR.: REVIEW OF TESTIMONY:**

Joseph Bartone, Jr. is the nephew of NYP's owners, Anthony Bartone, Diane Bartone Sarro, Joe Sarro, Local 1010's President, (by marriage), and other owners of NYP. During the critical time period, February and March 2017 he lived with his Aunt/NYP Owner, Diane Bartone Sarro. [Tr. 1211] and Uncle, Joe Sarro, Local 1010's President. Apparently when NYP made a conscious decision to rid itself of Local 175; and to aid Local 1010 in filing a Petition for Representation in the exact certified bargaining unit held by

**175; Bartone Jr. found himself between the proverbial rock and a hard place.<sup>2</sup>**

**According to Billy Smith, Bartone Jr. showed Smith a stack of Local 1010 authorization cards and said to Smith that Steve Sbarra, Local 1010's Shop Steward, gave Bartone Jr. the cards, advising that Bob Coletti wanted Bartone Jr. to pass them out. When Billy Smith responded "that's crazy" Bartone Jr. said: "I don't even want to do this. I'm not going to do it unless I – my uncle tells me to do it." [Tr. 415-416]. So question, did his Uncle tell him to do it?**

**Michael Bartilucci testified that he specifically observed Bartone Jr. passing out Local 1010 authorization cards in April or March of 2017. [Tr. 350]. Bartilucci remembered clearly that on a fairly big paving job, [Tr. 350], Bartone Jr. called a crew of at least a dozen men into like a circle; and as he passed out the authorization cards for 1010 he said that *the office* wanted "us" to sign the cards;**

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<sup>2</sup> Bartone Jr. signed a Statement regarding his speaking to Jon Farrell, NYP's counsel. Exhibit R-10. At this time Bartone Jr. did not deny that he had spoken to Farrell in the presence of his own Attorney. Tr. 1209. The fact that he met with Farrell and spoke about the case, as the Exhibit appears to say he did; belies Bartone Jr.'s later testimony that he spoke to no one about having sent a text message to Sal Franco, Jr. that admitted he was acting on behalf of the office when he passed out 1010 authorization cards to other 175 members.

and the company wanted to go in the direction by using the 1010 laborers; and that if we wanted to work there, we had to sign the cards. [Tr. 351]. Bartone never denied actually saying that the company wanted to go in the direction by using 1010 laborers.

Bartone Jr. admitted distributing authorization cards on behalf of Local 1010. [Tr. 1215]. He denied, however, that anyone from NYP asked him to pass them out. [Tr. 1215]. He claims, without illuminating why, that he was not in love with the direction in which 175 was going, and that he wanted a union with stability; that 1010 would be better for him. [Tr. 1215]. Apparently so did NYP and the Bartone family.

Bartone Jr. then confirmed that he had sent Sal Franco, Jr. a text message about Bartone Jr.'s passing out 1010 cards. [Exhibit GC 22; Tr. 1215-1216, 1230-1231]. Upon confirming that he sent the message, he then claimed it was not truthful. The "lie" he claimed was the phrase "I told the men I gotta do what office wants at the end of the day." He now claimed that the "office" did not ask him to distribute the cards. He said that it was never spoken of; [Tr. 1216, 1218]; that he did not know what the office wants at the end of the day. [Tr. 1216]. He sent the text to avoid being looked at

as “the complete bad guy.” [Tr. 1217]. Bartone Jr. claimed that other than using the phrase that this is what the office wants me to do in the text message; he never used that phrase when actually speaking to and passing authorization cards out to his 175 co-workers. He claims that he never told anyone that he had even sent the text message to Sal Franco, Jr. [Tr. 1241, 1245], not even his own lawyer or NYP’s lawyer when he prepared his testimony with them. [Tr. 1209, 1241, 1245]. Is that denial credible?

His statements simply don’t ring true. First, he put the words in writing in his text to Sal Franco, Jr., his friend. Second, Billy Smith was specific in his recollection as to what Bartone Jr. said to him. Why would Bartone Jr. implicate Steve Sbarro and Robert Coletti, Esq. in a request for him to pass out cards if it was not a true statement. Bartone Jr. never denied speaking to Billy Smith; and never denied specifically that Sbarro and Coletti directed him to pass out the cards. Moreover, he did not deny saying to Billy Smith that he was going to ask his Uncle if he should pass them out. Finally, Steve Sbarra, 1010’s Shop Steward, was not called by either NYP or Interested Party to deny that he gave Bartone Jr. the cards and told him that Coletti told Sparra to give them to Bartone Jr. to

**pass out. Further, why would he want to ask his Uncle if it was ok to pass them out if he was NOT being told by Sbarro that Coletti wanted him to pass them out? Why implicate the owner of the Company or the President of 1010 to Billy Smith if he was taking this action of passing cards out on his own volition?**

**Then there was the situation where Bartone Jr. was paid for November 1, 2017, a day he admittedly did not work. He was the Foreman of his own crew on November 2, the next day. As Foreman he filled out the weekly time sheet for November 2. And lo and behold November 1 was also filled out as if he had worked 8 hours November 1. [Exhibit IP-4. Tr. 1219]. He denied placing the number “8” on that time sheet for November 1, 2017; although Greg Schmaltz testified that Bartone Jr. had explicitly told him that Bartone Jr. had put Bartone Jr. down as having worked that day on the Time Sheet for his own crew. [Tr. 927, 1219]. Bartone Jr. admits being paid for the day.**

**Bartone Jr., however, never testified that he reported this overpayment to Peter Miceli. And Peter Miceli never disciplined or fired Bartone Jr. for “stealing time.” Bartone Jr. did not testify either that there was an understanding that he was to be paid even**

for days he did not work. Now, that would be explained since Miceli testified that only he, Martha Bartone, and the payroll department knew about that deal. But if that were true, then why didn't Bartone Jr. report the over payment as Miceli would have expected any worker who was overpaid to report? Nor did Bartone Jr. deny telling Greg Schmaltz that he had put himself down as having worked. At least Greg Schmaltz was no Rat.

Miceli testified that in passing, casual conversation, Bartone Jr. mentioned on some day in October, that he had been working with Gus Seminatore and that Gus came to the crew late. Although Bartone Jr. could not remember the specific date; or even a general date that Gus came in late; and could not remember how late Gus had come when he met the crew;[Tr. 1221] and even though Miceli indicated Bartone Jr. told him about it not on October 16<sup>th</sup> but possibly several days after October 16; [Tr. 1487], the testimony from Bartone Jr., (apparently adopted as gospel by Miceli), was that Gus had arrived around 11 A.M.; or maybe Noon on some day Bartone Jr. could not identify. [Tr. 1221] When asked if he had told anyone that Gus had come late to the crew Bartone Jr. said: "*I think I told Pete.*" Bartone Jr. could not even be certain he even told Pete.



**Under these circumstances why should we believe that Miceli's justification for discharging Gus Seminary was based on anything but a false premise. Bartone Jr. simply did not really remember the date or time of the incident nor was he certain that he even told Pete that information. Maybe that is because the story Miceli relied upon that Gus arrived at 11 A.M. or Noon was false and simply made up.**

**LOUIS DADABO: REVIEW OF TESTIMONY:**

**Louis Dadabo, a long time 24 year NYP employee, [Tr. 1117], a member in good standing of 175; who variously held the job titles of Foreman, Shop Steward, Field Coordinator, [Tr. 1117, 1118, 1124], testified ostensibly to say that he also testified at the 10k hearing; that he still was employed by NYP and that he heard no talk about signing 1010 cards in March/April 2017; saw no one passing out such cards and knew nothing about the claims of Local 175 in this case. [Tr. 1120-112] His testimony for the following reasons should be viewed critically.**

**Dadabo acknowledges he has known and been friends with Paddy Labate for 26 years. [Tr. 1119, 1143]. Dadabo claims that**

he never saw Paddy Labate inform employees they should sign 1010 cards. He never witnessed Paddy Labate talking about that topic in the yard. [Tr. 1120] Dadabo claims that he never saw cards being handed out and he never heard anyone tell someone to sign a 1010 card. [Tr. 1126] Dadabo was reluctant to speak about Labate's current position with NYP. [Tr 1124-1125] He admitted he heard "rumors" but never saw any such activity. [Tr. 1126, 1128] He was not aware of any effort of having 175 members to sign 1010 cards. [Tr. 1128].

Looking at Dadabo's testimony critically you see inconsistencies. At first he says he does not know who assigns crew members [Tr. 1131]; but then admits that no shows are replaced through the Union with the Shop Steward calling for men. [Tr. 1132] He stated that the Shop Steward every morning would have a meeting with the crews that are going out; just to tell them where they're going. [Tr. 1133] The Shop Steward is usually in the yard every morning. [Tr. 1134] This places Paddy Labate in the yard every morning talking to the guys.

Dadabo noted that when he was Shop Steward he often left the yard early; but as Shop Steward he was there pretty much

**every morning. [Tr. 1134-1135] When a Foreman, he was typically in the yard by 5:30 a.m.; leaving about 6:00 a.m. [Tr. 1136-1137]**

**Dadabo admitted that when he was actually in the yard he was NOT involved in every conversation that took place in the yard. [Tr. 1137-1138] That there were conversations that occurred in the yard that he did not hear. [Tr. 1139] He has seen people talking without hearing the words they were saying. [Tr. 1139]**

**Dadabo volunteered that “I’m an extremely hyper focused person to where I pretty much block out most things that are going on around me and I’m always about the task at hand. So I really don’t generally observe anybody talking around me.” [Tr. 1140]**

**Dadabo also testified that he never spoke to anyone about what his testimony would be at the hearing. [Tr. 1141]**

**Dadabo claims that he had been subpoenaed to testify and didn’t know either what it was about or when he had to testify until that morning. [Tr. 1141] He claims Coletti told him that morning**

**that he was scheduled to testify; but did not inform him in any way about what this is about. [Tr. 1142]<sup>3</sup>**

**Dadabo admitted that he had heard about a Petition for an election being filed by Local 1010 in regards to the asphalt work. Tr. 1145] Dadabo stated he never spoke to his friend Patty Labate about the Petition. Dadabo claimed Labate never asked him to sign a 1010 card. Dadabo denied ever being asked to give a statement to NYP regarding the issues involved in this Complaint. [Tr. 1146; but see Exhibit R-9 to the contrary.] Dadabo responded when confronted with Exhibit R-9 that all he was told about was the subpoena, that was it, no other discussion; but he failed to reveal that he had been presented with and signed Exhibit R-9. Dadabo acknowledged that he was told by Coletti that the lawyers for the Company needed to speak to him; that they were in the back of the office. [Tr. 1161]. Having been told to go to the back office, and having been told that the NYP lawyers wanted to speak with him, is**

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<sup>3</sup> Subsequently Dadabo had to admit that he met with NYP's attorney, Jon Farrell, had signed a Statement related to discussions with said counsel; but claimed there was no conversation about what his testimony would be other than to tell the truth. Tr. 1154-1155, 1157. Dadabo stated he had no in depth conversation; but the conversation lasted about five (5) minutes. So we are left to believe they never spoke about the issues raised in this Complaint.

**it believable that nothing was discussed; that they didn't speak with him about what his testimony would be at trial?**

**Dadabo's testimony puts Patty Labate in the yard every morning talking to the foremen and crews who are being sent out each day. Every morning the shop steward would have a meeting with the crews that are going out. [Tr. 1133] The shop steward usually is in the yard every morning. [Tr. 1134] Moreover, Dadabo testified that: "in the morning I would always talk to Labate. So you know, on a daily basis. I see him every morning and just general conversation. So yes, I talk to Patty Labate in the morning—at the yard." [Tr. 1143-1144] Dadabo would have us all believe that he never spoke to Labate about the Petition filed; about signing 1010 cards; or about the company wanting to take the asphalt jurisdiction to 1010 and away from 175.**

**Dadabo's testimony was basically that of a person who sees no evil, hears no evil and speaks no evil. He was not going to speak about the job of Patty Labate or what Labate did every morning in the meetings with the foremen and crews during the critical time. He admitted he does not listen to conversations going on around him and either was out of the yard early or didn't hear**

conversations as he focused solely on the work he was doing. And the fact that he denied discussing what he saw or heard with anyone is not believable. How would NYP attorneys know whether he heard or saw Labate pass out cards or talk about signing them if Dadabo hadn't told them or Coletti that he didn't? How could they be sure he wouldn't corroborate the other 175 members who testified about Labate's actions if no one had spoken to him about the issues and what his testimony would be at hearing? [Tr. 1154]

**ROBERT ZAREMSKI: REVIEW OF TESTIMONY:**

Robert Zaremski, has worked for NYP for 34 years; the last 10 as Operations Manager under Peter Miceli. [Tr. 1163] He gets same day reports from the companies NYP does business with and from that develops routes, material needs, and the man power needed for the next day. [Tr. 1164] Zaremski contacts the various shop stewards and advises each how many men are needed. [Tr. 1164] He distributes the Routes he creates to the respective Foremen. [Tr. 1165] The number of men on each crew may vary depending on the function they perform. [Tr. 1165-1166] Zaremski assumes Shop Stewards would call if they needed

**additional workers based on the number of crews required. Shop Stewards, when there was a lack of work, would be the ones to notify the workers not to come to work; of a layoff. [Tr. 1169] Foremen keep track of the hours worked by asphalt employees. [Tr. 1172]**

**Zaremski knows Donald Mascetti. [Tr. 1173] Zaremski denies telling Mascetti he could not work for NYP because he filed an unfair labor practice charge at the NLRB. [Tr. 1173] Zaremski claims he would never say anything like that to a worker because if he reported to work and was eligible to work, the person would work. [Tr. 1173] Zaremski does not believe he instructed Mascetti to speak to Robert Coletti concerning an alleged unfair labor practice filed by Mascetti. [Tr. 1173]**

**On cross examination Zaremski noted that in the early fall of 2017 NYP had a set group of workers eligible to work at NYP. [Tr.1180]. The set group could have come a month or two before the fall. [Tr. 1181] Prior to the set group of workers being established when Zaremski saw a name he did not recognize working he didn't do anything, even if he thought the worker was not qualified. They worked. [Tr. 1182-1183] Zaremski leaves it up**

to the Shop Steward to place men on each crew—he leaves that up to the Shop Steward. [Tr. 1183] Zaremski confirmed that a Shop Steward is not required to consult with him about what particular person he puts on the crews each day. [Tr. 1183]

Zaremski was familiar with Mascetti. They spoke occasionally on the telephone when he was working to get direction from Zaremski. Mascetti does not work for NYP having stopped working in 2017. When asked if Mascetti had ever had asked him why he wasn't getting assigned work at NYP, Zaremski failed to answer directly; instead saying: "I don't believe he had a badge." [Tr 1184] Zaremski believes Mascetti asked him why he didn't have a badge; and that Zaremski didn't have an answer for him. Zaremski specifically said that why Mascetti wasn't being assigned work was up to the shop steward. [Tr. 1185] Zaremski said that Mascetti could not work if he did not have a badge. [Tr. 1185] Zaremski denied that Mascetti had been working consistently in 2017. Zaremski thought he only worked a couple of days per week. [Tr. 1186] He did not remember Mascetti putting in a full week.



**Simply put, Zaremski was wrong about Mascetti not having a badge and not working. Miceli testified Mascetti had a badge. The records show Mascetti worked consistently during August, September 2017; a time frame when he would have had to have a badge to work. [See Bates Stamp #0836-0837 which shows Mascetti worked starting with the week ending 8/6/2017 through week ending October 8, 2017] Mascetti testified that he did have a badge. Zaremski simply was wrong; or being evasive.**

**Notably, Zaremski did not mention anything about Macetti's work ethic being deficient, as Miceli claimed. He also deflected the issue of why Macetti had not been recalled to work noting that was the Shop Steward's job. [Tr. 1185] Zaremski was adamant that if a worker did not have a badge the person did not work at NYP. [Tr. 1202] The facts show, however, that Macetti worked at NYP during the summer and fall 2017; thus according to Zaremski he must have had a badge. He can't have it both ways. Zaremski is just plain wrong when he says he does not believe Macetti had a badge; and when he says he does not think Macetti worked at NYP consistently.**

**PASQUALE (PADDY) LABATE: REVIEW OF TESTIMONY:**

**Paddy Labate, currently a Field Supervisor (coordinator) was formerly a Shop Steward for 175 and a Foreman. [Tr. 296-297] Labate would choose men to be placed on crews based on their skill and experience. [Tr. 298-299, 323] He would not have to consult with anyone when determining who would make up the crews. [Tr. 299] If he needed more men to complete a crew he would call the Union's Business Manager. [Tr. 299-300] Sometimes he would have to move guys around or pick up guys that he knew were not working on a particular day. [Tr. 299-300] He even had switched men from one crew to another. That happened a lot. [Tr. 300] Labate said he did not have to consult with anyone when he exercised that authority. [Tr. 300, 327]. He had authority, without consultation, to decide who would work and who would stay home when there was a lack of work. [Tr. 301-302] His decisions on these subjects were being made independently. [Tr. 328]**

**Labate testified that when he worked a half a day, that he got paid for a full day. [Tr. 333] Labate also acknowledged that he was called to the office for a meeting regarding Glenn Patrick. [Tr. 331]**

**Pete Miceli and Rob Zaremski participated and asked if Labate had put Patrick down on the Payroll sheet for a specific date. Labate said he didn't; but they thought he did. [Tr. 332] Labate says he truthfully did not remember it he told Patrick about the meeting with Miceli. [Tr. 332] But if Labate did not tell Patrick about the meeting, then how did Glenn know that one ever occurred?**

**Labate remembered that in April of 2017 that an organizing effort was made by Local 1010 of the 175 asphalt unit; stating: "I think there was some stuff going around about passing cards out and stuff." [Tr. 329] He claimed that he never really spoke to anybody about it. [Tr. 329] Labate, when questioned by NYP's attorney, denied threatening any employees with discharge if they did not sign Local 1010 membership cards. [Tr. 318] When asked by Counsel for the General Counsel whether he recalled ever talking to anybody about signing Local 1010 cards Labate responded: "Not really. I never really spoke to anybody about it." [Tr. 329] He denied telling anyone that they could lose their pension if they didn't sign on to Local 1010. [Tr. 329] And he denied that Billy Smith would say that he did. [Tr. 330] Labate denied that anyone ever gave him a 1010 authorization card or**

**that he ever possessed any cards. [Tr. 337]. We now know Labate was not being fully transparent with the Administrative Law Judge.**

**Labate later in the hearing, when called on NYP's direct case, admitted that he had given his opinion about the relationship between 175 and NYP and Local 1010. [Tr. 1327] He admitted that he had discussed his opinion with people; about how he felt about it; saying: "Probably yeah." [Tr. 1328] After first trying to avoid answering a question about whether he told workers what would happen if NYP decided they weren't using 175, he responded: "its pretty simple. They'd—if they're not using 175 and you're in 175 you'll be no longer able to work there." [Tr. 1330-1331] When asked if he recalled specifically saying that, he responded: "Not really. I mean, possibly." [Tr. 1331] Labate went on to admit that instead of never having discussed the topic, the guys talked all the time about it when working in the yard. You discuss things; rumors that you hear; all the 175 guys. [Tr.1331].**

**Labate would also later, after pulling some teeth, admit that he could have discussed the topic of not transferring pension with his co-workers. [See Tr. 1337-1338] In response to a question about whether he had talked to his co-workers about signing a**

1010 card, Labate avoided a response by saying: “Oh. I didn’t threaten people. We’ve spoke. We’ve – all—everybody speaks about it; what’s going on and all that, but I’ve never threatened anybody.” [Tr. 1136] Labate denied advocating that workers should sign a 1010 card [Tr. 1337], but never denied having had a conversation with Greg Schmaltz where Labate had given him a 1010 card to sign; had advised Schmaltz that he had a day to turn it in; and never denied that he told Schmaltz to take a picture of it and send it to Labate so Labate could give it to Coletti in time. Labate never denied doing that; nor did he deny that he himself signed a 1010 card. [See Tr. 1057]

Mr. Labate was direct at times when he spoke of his job and work as a Foreman and Shop Steward. When it came to his statements to co-workers in relationship to the 1010 organizing campaign; not so much. It is more likely that what the other witnesses said about Labate’s actions, attempting to convince them to sign 1010 authorization cards, was substantially more credible. Labate was often evasive, equivocal and at times not believable.

## **CONCLUSION:**

**This review of Testimony from NYP witnesses Peter Miceli, Robert Coletti, Joseph Bartone, Jr., Louis Dadabo and Robert Zaremski demonstrates that their memories were faded, their facts were often wrong, or their answers were evasive. In the totality, the witnesses for Charging Party and General Counsel were right on point, consistent, factual and truthful. Miceli, as the claimed disciplinarian who decided to terminate Gus Seminatore, Glenn Patrick and Greg Schmaltz, exhibited serious hostility to both Local 175 and the workers. He believed that they went to the Labor Board and created issues for NYP by testifying or representing 175. Miceli looked for reasons to justify the discharges so he raised issues with Time Sheets never before applied in the history of NYP to justify his actions; and that necessitated his discharge of Greg Schmaltz. After all, neither Gus nor Glenn controlled what was written on time sheets; so Miceli had to make up a conspiracy to steal time that could only be effectuated if Greg Schmaltz was a co-conspirator. But why would Schmaltz be involved in such an alleged conspiracy? He benefited not at all; there was nothing in it for him. And the actions of Gus and Glenn, in covering the job, and**

**not wanting their 175 crew members to work short; supported the Company's desire to get the work done efficiently. Glenn could very easily have gone home on October 2. Gus very easily could have asked NYP to pay him at least for 4 hours for the time he spent working. Gus could have stayed home on October 16, but instead he dragged himself out of bed and hurried to meet his crew at their second stop, around 8:30 a.m. These are not the actions of men who are trying to put something over on the company.**

**The fact that Michael Bedwell, Anthony Franco, Jr., Shomari Patrick and Donald Mascetti were not allowed to work at NYP can only be logically explained because of their support for and/or familial relationship to 175 Union Hierarchy. They each were ready, willing and able to work when NYP would call for them; but NYP did not call them for invidious reasons.**

**Respectfully submitted,**

**Eric B. Chaikin, Esq.**

**UNITED STATES OF AMERICA**  
**BEFORE THE NATIONAL LABOR RELATIONS BOARD**  
**REGION 29**

**NEW YORK PAVING, INC.,**  
**Respondent**

**And**

**Case Nos: 29 CA 197798**  
**29 CA 209803**  
**29 CA 213828**  
**29 CA 213847**

**CONSTRUCTION COUNCIL**  
**LOCAL 175, UTILITY WORKERS**  
**UNION OF AMERICA, AFL-CIO,**  
**Charging Party**

**And**

**HIGHWAY, ROAD AND STREET**  
**CONSTRUCTION LABORERS LOCAL UNION**  
**1010 OF THE DISTRICT COUNCIL OF PAVERS**  
**AND ROAD BUILDERS, LABORERS**  
**INTERNATIONAL UNION OF NORTH**  
**AMERICA, AFL-CIO,**  
**Party of Interest.**

**Affidavit of Service of Counsel for the Charging Party's Brief In**  
**Support of Counsel for the General Counsel's Complaint**

**The Undersigned, hereby affirms, under penalty of perjury,**  
**that on December 20 2018, I served the above titled Brief by e-file**  
**and e-mail upon the following persons, according to NLRB Rules &**  
**Regulations Section 102.46; addressed to them at the following**  
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**Dated: December 20, 2018**

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